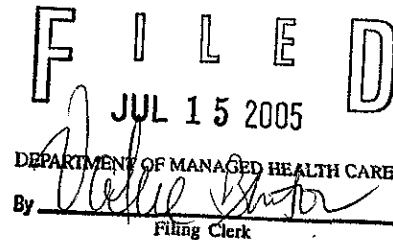


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9
10 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
11 OF THE STATE OF CALIFORNIA

12 IN THE MATTER OF:

13 **UNITED FAMILY HEALTHCARE**
14 **GROUP**

15 Respondent.

) DMHC No.: 04-374

) OAH No.:

) **CEASE AND DESIST ORDER AND**
16 **NOTICE OF RIGHT TO HEARING**

) (Health and Safety Code sections 1349,
17 1360, 1386, 1391 and 1395; California Code
of Regulations, title 28, section
1300.67.4(a)(3)(A))

18
19 **TO: UNITED FAMILY HEALTHCARE GROUP:**

20
21 The Director of the Department of Managed Health Care, by and through her
22 designee, Assistant Deputy Director Amy L. Dobberteen, after investigation, determines as
23 follows:

24 **I.**

25 **INTRODUCTORY STATEMENT**

26 1. California Health and Safety Code section 1349 requires certain entities
27 arranging for health care services to first obtain a license from the California Department of
28 Managed Health Care. Respondent is acting as a health care service plan, arranging for the

1 provision of health care services, and accepting periodic payments. Accordingly, it is
2 operating as a health care service plan as defined in Health and Safety Code section
3 1345(f)(1), and is required to obtain a license under the Knox-Keene Health Care Service
4 Plan Act of 1975, as amended ("Knox-Keene Act"). Respondent's failure to obtain a license
5 subjects it to the enforcement powers of the Department of Managed Health Care.

6 2. Disregarding California law, the entity set forth above is soliciting California
7 residents by advertising in local weekly newspapers and on the Internet for purposes of
8 selling health care services without a license, misleading California consumers and
9 misrepresenting its product. It purports to provide a discount on health care services, but no
10 discounts are available because providers have no arrangement with Respondent to give
11 discounts, and because discounts are only available to members who pay in full for physician
12 and hospitalization services before or on the day they are rendered.

13 3. Therefore, the Department of Managed Health Care, by the Order below,
14 hereby directs Respondent to cease and desist from any further unauthorized, deceptive, and
15 unlawful activity in the State of California.

16 II.

17 STATUTORY AUTHORITY

18 4. The Director of the Department of Managed Health Care is vested with the
19 responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of
20 1975, as amended, (Health and Safety Code section 1340, *et seq.*) ("Knox-Keene Act"). The
21 intent and purpose of the Knox-Keene Act is to promote the delivery and quality of health
22 and medical care to the people of California who enroll in a health care service plan by,
23 among other things: "Prosecuting malefactors who make fraudulent solicitations or who use
24 deceptive methods, misrepresentations, or practices, which are inimical to the general
25 purpose of enabling a rational choice for the consumer public." (Health and Safety Code
26 sections 1341 and 1342(c).)

27 ///

28 ///

1 5. Health and Safety Code section 1345(f)(1) defines a health care service
2 plan to mean:

3 Any person who undertakes to arrange for the provision of
4 health care services to subscribers or enrollees or to reimburse
5 any part of the cost for those services, in return for a prepaid
or periodic charge paid by or on behalf of the subscribers or
enrollees.

6 6. The Legislature has plainly evidenced its intent as to the application of the
7 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

8 It is the intent of the Legislature that the provisions of this
9 chapter shall be applicable to any private or public entity or
political subdivision which, in return for a prepaid or periodic
10 charge paid by or on behalf of a subscriber or enrollee,
provides, administers or otherwise arranges for the provision
of health care services...

11
12 7. Any person conducting business as a health care service plan is required to
13 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,
14 which provides:

15 It is unlawful for any person to engage in business as a plan in
16 this state or to receive advance or periodic consideration in
connection with a plan from or on behalf of persons in this
17 state unless such person has first secured from the director a
license, then in effect, as a plan or unless such person is
18 exempted by the provisions of Section 1343 or a rule adopted
thereunder. A person licensed pursuant to this chapter need
19 not be licensed pursuant to the Insurance Code to operate a
health care service plan or specialized health care service plan
20 unless the plan is operated by an insurer, in which case the
insurer shall also be licensed by the Insurance Commissioner.

21 8. Untrue and misleading advertising and solicitation, both by affirmative
22 misstatement and by omission of important information, is prohibited by Health and Safety
23 Code section 1360, which provides:

24 (a) No plan, solicitor, solicitor firm, or representative shall
25 use or permit the use of any advertising or solicitation which
is untrue or misleading, or any form of evidence of coverage
26 which is deceptive. For purposes of this article:

27 1. A written or printed statement or item of
28 information shall be deemed untrue if it does

1 not conform to fact in any respect which is, or
2 may be significant to an enrollee or subscriber,
or potential enrollee or subscriber in a plan.

- 3 2. A written or printed statement or item of
4 information shall be deemed misleading
5 whether or not it may be literally true, if, in the
6 total context in which the statement is made or
7 such item of information is communicated, such
8 statement or item of information may be
9 understood by a person not possessing special
knowledge regarding health care coverage, as
indicating any benefit or advantage, or the
absence of any exclusion, limitation, or
disadvantage of possible significance to any
enrollee, or potential enrollee or subscriber, in a
plan, and such is not the case.

10 * * *

11
12 (b) No plan, or solicitor, or representative shall use or
13 permit the use of any verbal statement which is untrue,
14 misleading, or deceptive or make any representations about
15 coverage offered by the plan or its cost that does not conform
to fact. All verbal statements are to be held to the same
standards as those for printed matter provided in subdivision
(a).

16 10. California Code of Regulations, title 28, section 1300.67.4(a)(3)(A) prohibits
17 plans from offering illusory benefits. It provides: "A benefit afforded by the contract shall
18 not be subject to any limitation, exclusion, exception, reduction, deductible, or co-payment,
19 which renders the benefit illusory."

20 11. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that
21 constitutes fraud or dishonest dealing or unfair competition, as defined by section 17200 of
22 the Business and Professions Code.

23 12. Health and Safety Code section 1395 further requires that:

24 . . . Any price advertisement shall be exact, without the use of
25 such phrases as "as low as," "and up," "lowest prices" or
26 words or phrases of similar import. . . . Price advertising
27 shall not be fraudulent, deceitful, or misleading, nor contain
any offers of discounts, premiums, gifts, or bait of similar
nature. In connection with price advertising, the price for
each product or service shall be clearly identifiable.

28 13. The Director is empowered to enforce compliance with Knox Keene Act by

Health and Safety Code section 1391(a)(1), which provides in relevant part:

The director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the director pursuant to this chapter.

III.

VIOLATIONS OF LAW

14. Respondent is undertaking to arrange for the provision of health care services to members in California, either directly or through arrangements with others, in return for a periodic charge paid by the members, within the meaning of Health and Safety Code section 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for the provision of health care services within the meaning of Health and Safety Code section 1399.5. It does so through promising members "Great Customer Care" and a "health care advocate that can help you get quality care at an affordable price" and requiring them to call customer service to obtain current provider information, specialists or hospitals, or to enable Respondent to "locate a doctor anywhere across the nation and refer you immediately in case of an emergency." Respondent further, undertakes to help members "find the hospital that best suits your needs." Respondent, therefore, is engaging in business as a health care service plan in California and receiving advance and periodic consideration in connection with a plan from, or on behalf of, persons in this state, without having first secured a license from the California Department of Managed Health Care. This conduct violates Health and Safety Code section 1349.

15. Respondent's advertising and solicitations in weekly newspapers in Lodi, Glendale, and Yucca Valley, and on the Internet, are untrue and misleading in that they offer discounts on medical, hospital, vision, dental, and prescription drug services that are unavailable because providers, even those included on Respondent's provider list, have never heard of United Family Healthcare Group; providers will not accept the discount card or have not agreed to offer discounted prices; or the cost of services for customers paying

1 cash is less than they can obtain with the card. Respondent's marketing of "Satisfaction
2 Guaranteed" and a 30-day money back guarantee also involves representations that are
3 untrue and deceptive in that they fail to clearly and conspicuously disclose that the \$49
4 enrollment fee is not refundable. These practices violate Health and Safety Code sections
5 1360(a)(1) and (b).

6 16. Respondent's advertising and solicitation practices are further misleading in
7 violation of section 1360(a)(2) and (b) by using language typically associated with insurance
8 coverage. Its advertising materials (1) refer to "the ever-increasing cost of health insurance"
9 resulting in many individuals finding that they "are no longer able to purchase full health
10 insurance coverage," (2) state that "United Family answers these concerns with a program
11 that allows individuals to receive quality care at an affordable price, under a system that
12 allows the health care provider to get immediate payment," and (3) use insurance language
13 such as "All pre-existing conditions OK" and "No Pre-Existing Condition Exclusions." This
14 language, which appears to be describing an insurance product, is deceptive in that it would
15 appear to consumers who do not possess special knowledge about health care coverage that
16 the discount card is a type of health insurance.

17 17. Respondent also subjects the benefits ostensibly afforded by membership to an
18 additional limitation which renders the benefit illusory by attempting to disclaim
19 responsibility for "any refusal of participating providers to accept the network rates offered
20 under this program" in its "Member Terms" document. This constitutes a separate violation
21 of California Code of Regulations, title 28, section 1300.67.4(a)(3)(A).

22 18. Respondent's advertising and solicitations are also misleading in violation of
23 section 1360(a)(2) and (b) by failing to mention, or to clearly and conspicuously disclose,
24 that the program which allows the healthcare provider to get immediate payment consists of
25 the enrollee paying out of pocket, and that enrollees are required to make payment in full for
26 physician services and hospitalization at the time services are rendered. The solicitations are
27 particularly deceptive with regard to hospital benefits, and suggest in the fine print that
28 members must meet "proof of ability to pay" standards through obtaining one of the

1 following: "Adequately funded escrow Medical Savings Account; High deductible or
2 hospital indemnity insurance policy; Medical expenses loan" and offering to assist them in
3 doing so. These limitations or disadvantages are of significance to both potential members
4 and currently enrolled, paying members, particularly for the low-income population targeted
5 by Respondent.

6 19. By requiring that enrollees demonstrate proof of ability to pay by one of the
7 three means enumerated in the preceding paragraph, Respondent is subjecting the discount
8 hospital benefit ostensibly afforded by the contract to a limitation which was not
9 conspicuously disclosed and thereby renders the benefit illusory, in violation of California
10 Code of Regulations, title 28, section 1300.67.4(a)(3)(A). In fact, the method of obtaining
11 the discount can require additional expenses not covered by the discount program.

12 20. Respondent's conduct described herein constitutes fraud or dishonest dealing
13 or unfair competition, as defined by section 17200 of the Business and Professions Code, in
14 violation of Health and Safety Code section 1386(b)(7):

15 21. Respondent is engaging in prohibited inexact price advertising using terms
16 such as "save 20% to 50%, and sometimes more," and "savings of up to 50%," and by
17 setting forth percentages of savings ostensibly to be realized on a series of medical, dental,
18 vision and prescription services, while claiming that they are examples only, and that actual
19 savings and prices may vary by provider, state, or actual products or services rendered.
20 Respondent is further engaged in fraudulent, deceitful, or misleading advertising of non-
21 existent discounts. All such advertising violates Health and Safety Code section 1395.

22 22. Respondent is also engaging in offering additional premiums, gifts or bait to
23 persuade consumers to enroll as members. It offers an "InstaCare Emergency Medical Card"
24 that Respondent claims stores vital medical information on a 'smart card' accessible by
25 participating emergency personnel" and "Air Ambulance/Emergency Evacuation" services,
26 purportedly a \$10 monthly value, and asserts: "All this is provided with no out of pocket
27 expense to you!" These gifts or bait each constitute a separate violation of Health and Safety
28 Code section 1395.

1 IV.

2 **CEASE AND DESIST ORDER**

3 Based on the foregoing, the Director finds that Respondent has violated Health and
4 Safety Code sections 1349; 1360(a)(1), (a)(2), and (a)(3); 1386(b)(7) and
5 1395; and California Code of Regulations, title 28, section 1300.67.4(a)(3)(A)).

6 **THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene
7 Act:

8 **IT IS HEREBY ORDERED:**

9 1. That Respondent, and any of its directors, officers, trustees, managers,
10 affiliates, agents, and all persons participating with them or acting in concert with them, shall
11 immediately **CEASE AND DESIST** from:

- 12 a. Operating in California without a Knox-Keene Act license.
13 b. Promoting any further deceptive or misleading advertisements or
14 solicitations to California residents;
15 c. Conducting any enrollment activities in California for health care
16 memberships; including, but not limited to, medical, dental,
17 hospitalization, and pharmacy;
18 d. Taking, receiving, or forwarding any application for health care
19 memberships from California residents; and
20 e. Collecting or receiving, in full or in part, any payments for health care
21 memberships from or on behalf of California residents.

22 2. Respondent shall disclose in any advertisement or solicitation that may
23 reasonably be viewed by residents of the State of California; including, but not limited to,
24 any Internet web page or advertisement that their health care membership product is not
25 available in the State of California.

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28 ///

1 3. Respondent shall refund all monies to demanding members without undue
2 delay.

3 Dated: July 15, 2005

LUCINDA EHNES, Director
Department of Managed Health Care

By:



AMY L. DOBBERTEN
Assistant Deputy Director
Department of Managed Health Care